THE RECORD
OF THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

EDITORIAL BOARD

Harrison Tweed, *President* | Paul B. De Witt, *Executive Secretary* | Whitman Knapp, *Secretary*

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Association Activities

THE ANNUAL MEETING of the Association was held on May 14 and was attended by 250 members. Elsewhere in this number of THE RECORD will be found the list of officers elected at the meeting. As the membership knows, this Annual Meeting marked the retirement from office of the Secretary of the Association, Charles H. Strong, after almost thirty years of service. Testimonials and tributes to Mr. Strong's great contributions to the Association were paid by those with whom he has been associated in so many good causes. Mr. Strong was presented with a silver tray engraved with the names of the fifteen presidents with whom he served. In making the presentation of the tray, Bethuel M. Webster, chairman of the Executive Committee, spoke in part as follows:

"Mr. Strong has served under fifteen of the thirty-three presidents of the Association. To paraphrase what Mr. Strong himself said in his letter of retirement published in the March issue of THE RECORD, presidents come and presidents go but secretaries, thank goodness, stay with us a long, long time. All of us hoped that Mr. Strong would never go.

"Mr. Strong has held many positions and has received many honors since his admission to the Bar in 1892. An abbreviated statement of these which I hold in my hand covers a full page of single-space type. He has served the interests of good government, of education, of charity, and of the church in many capacities. I

refrain from mentioning such activities in detail because we are here tonight to dwell on his unparallelled service to our Association. In his faithful attention to our business Mr. Strong has not neglected his obligation to the Bar; he was a vice-president of the American Bar Association, our representative at many meetings of that association, a founder of the American Law Institute. But here in this House, and in our interest, he has done the work which he himself would prefer most to remember and which all of us will recall and mention as long as any of us meets here.

"Mr. Strong was a member of the Executive Committee and of the House and Nominating Committees before he was Secretary. He has been Chairman of the House Committee for many years. He has served on other committees of the Association and as its representative on many outside committees and agencies concerned with good government and the administration of justice."

THE ANNUAL MEETING adopted important amendments to the By-Laws of the Association. The effect of the amendments may be summarized as follows:

1. The number of members on the various committees will be definitely determined and the practice of adding "auxiliary" members will be abolished. The total number of members assigned to the committees will be at least as large as at the present time. Thus, opportunity for service on committees will be available to a somewhat larger proportion of the membership.

2. All standing committees appointed by the President will be divided into three classes of equal number, each class holding office for three years. Members of committees who have served for three years will not be eligible for reappointment to the *same* committee until one year shall have elapsed. Since at the present time at least a third of the membership of every committee has served for three years or more, the adoption of these by-laws, as a practical matter, will not result in the displacement from a committee of any member who, under the present four-year limitation on committee service, would not be displaced.

3. The chairman of the committees will *not* be assigned to a class, but will be appointed for one-year terms and may not be reappointed as chairman for more than three consecutive terms. Service as a *member* of a committee will have no bearing on the number of consecutive terms for which a member may serve as a *chairman*.

4. Two new committees are established: A Committee on Insurance Law and a Committee on Real Property Law.

5. The Committee on Insurance of Association Property, the Committee on Foreign Law, and the Committee on Increase of Membership will be appointed by the Executive Committee and not by the President.

THE EXHIBITION of paintings, water colors, etchings, drawings, lithographs, and sculpture by members of the Association held under the auspices of the Committee on Art on May 14 was an unqualified success. Seventy-one works of art by twenty-five lawyer-artists, all members of the Association, were displayed. John I. H. Baur, Curator of Paintings and Sculpture of the Brooklyn Museum, mounted the show and made the selection of the works exhibited from a submission of over one hundred items. The showing represented the best work of members of the bar who have turned to art as a medium of recreation, and demonstrated once again the versatility that has always added distinction to the profession.

It is appropriate to reprint here the statement about the show made by the Committee on Art, of which G. Franklin Ludington is Chairman. Those who attended the exhibit will most certainly agree with the Committee's statement. The Committee said:

> "In presenting to public view these pictures and other works of art, we are under no illusion; ours does not purport to be a professional show. Yet those who view it will agree that it is not amateurish. It is marked by good taste, artistic skill and conscientious effort—just what you would expect to find here. It has been put together by lawyers in a lawyer-like way. But, most to be remarked, is that this ex-

hibition, made for pleasure, should in consequence give no less pleasure to those who view it than to those who so enthusiastically have participated in making it possible."

This story on the art exhibition would not be complete without listing the results of the ballot taken on the most popular work in the various media. The winners, in the usual order, are:

OIL

Newton, Carl E.	Study in Yellow
Steinberg, Harris B.	Filibuster
Goldstone, Abner	Cityscape

WATER COLOR

Lindey, Alexander	Brick Yards, Kingston
Steinberg, Harris B.	Annual Bar Dinner
Isaacs, Julius	Deserted House

LITHOGRAPH

Shearn, Clarence J., Jr.	Snow Peak
Rosenberg, James N.	Dies Irae
Shearn, Clarence J. Jr.	Tropical Swamp

ETCHING

Weitzner, Emil	Moment
Weitzner, Emil	Churchyard

DRAWING

Sand, Martin Jarvis	Figure Study (No. 33)
Isaacs, Julius	Portrait of Wife
Welling, Richard	Statue of St. Louis

SCULPTURE

Fuldner, Mansfield C.	Seated Nude
Rowe, Edward C.	Bronze Bust
Fuldner, Mansfield C.	Standing Nude

PASTEL

Rosenberg, James N.	Caddies at Camden

Those who also ran—and they can console themselves, as artists are wont to do, with the thought that this was a strictly "popular"

ballot—were: Mark Eisner, Alfred H. Holbrook, George Nebolsine, George Wharton Pepper, George Robinson, Elihu Root, Jr., Harold Roland Shapiro, M. Sully, Jr., John W. Thompson, Harrison Tweed, Joseph Walker, T. E. Wolcott, Rene A. Wormser.

PARTICULAR attention is directed to an important report of the Committee on the Domestic Relations Court published in this number of THE RECORD. The report deals with the very serious situation that has resulted from the lack of shelter care for neglected and delinquent children. Faced with the failure of the present system, the Mayor has a special committee studying the problem. As the Association's Committee points out, over five hundred children are awaiting placement in foster homes and institutions because no room is being made available in existing facilities. The Association's Committee calls for the city to maintain adequate temporary shelters and for the state to expand its long-term institutional facilities.

THE RECENTLY established school of industrial and labor relations at Cornell University will have a course in arbitration practice and law. John T. McGovern, chairman of the Association's Committee on Arbitration, and the President of Cornell have worked out some of the details of the course. The Arbitration Committee has also been active in the field of publications. A revised edition of the Committee's Outline of Arbitration Procedure has been prepared and will shortly be distributed to all members of the Association. Mr. McGovern has written "Arbitration and the Lawyer," published in the magazine of the American Arbitration Association, and has prepared for early publication in the Bulletin of the New York State Bar Association, "The Trend of Arbitration."

ON MAY 9 the Committee on Criminal Courts, Harry C. Kane, chairman, held its annual dinner at the St. Moritz Hotel. The din-

ner was attended by a number of judges and there was the usual program of songs and informal talks. Among the speakers were: the Honorable Stanley H. Fuld, recently appointed to the Court of Appeals, Justice Ferdinand Pecora, and the Honorable Vincent R. Impellitteri, president of the Council.

ANNOUNCEMENTS have been mailed inviting members of the Association to a spring party to be held at the House of the Association on June 6. Beer and trimmings, songs, quartets, the reappearance of members of the cast of "May It Please the Court," magicians and caricaturists should mean another successful event in the eventful program of the Entertainment Committee.

IN THE APRIL NUMBER OF THE RECORD the resolution of the Committee on the Domestic Relations Court asking that more funds be appropriated for that important court was printed. Although the general city budget showed an increase of something like eleven per cent, the budget for the court was increased less than one per cent. The Committee says of this disappointing action:

"Notwithstanding a detailed memorandum submitted to the Mayor by the Acting Presiding Justice of the Court in support of the proposed Budget, and several supporting exhibits, the increase allowed was only $87,546. as against the requested increase of $592,323.

"Furthermore, several of the items comprising the increase of $87,546. allowed were in the nature of bookkeeping entries. The actual increase was only $19,325., of which $13,525. was for salaries (including two additional Court attendants, to be used in connection with transportation) and $5,800. for increases in other than personal service.

"No additional Probation Officers were authorized and nothing was provided for a Psychiatric Clinic.

"The result of the effort to obtain adequate provision for the

Court is very disappointing—*and will mean that the Court will continue to be understaffed and unable to function effectively.*

"It is hoped that before the next Budget is considered there will be an opportunity to present to the appropriate authorities the needs of the Court, to the end that more adequate provision for the support of the Court will be made in subsequent Budgets."

THE COMMITTEE on the Bill of Rights, acting through its chairman, George Roberts, has protested the order of the Allied Military Government of Germany which would require all books glorifying nazism to be burned. Printed here is the text of Mr. Roberts' letter on the subject, which was published in The New York Times on May 16.

To the Editor of The New York Times:

On the front page of THE NEW YORK TIMES of May 14 appears an article under a Berlin date line. The first paragraph of this article is as follows:

"Under orders of the Coordinating Council of the Allied Military Government of Germany, all German military and Nazi memorials will be destroyed by Jan. 1 and all books glorifying nazism or militarism will be confiscated. It is assumed that the books will be burned."

One of the chief offenses of the Hitler regime was the suppression of ideas and the burning of books in Germany. It is inconceivable that this country will permit itself to be a party to this same offense.

The American people strained to the utmost to win a war in the hope that victory would mean the preservation in this country of those principles which are embodied in the Bill of Rights and would result in the spread of those ideals elsewhere in the world. If we are faithless to these ideals and ourselves burn books of our enemies, we will have won a war only to betray the great principles for which we fought.

The books glorifying nazism and all other records of Hitler's shameful regime should not be burned but care-

fully preserved as a record in which all may read to see and understand the thoughts and motives which made Germany the most hated nation in the world and reduced that once honored and respected country to dust and ashes.

GEORGE ROBERTS,

Committee on the Bill of Rights, Association of the Bar of the City of New York.
New York, May 14, 1946.

THE COMMITTEE on Bankruptcy and Corporate Reorganizations, Alfred N. Heuston, chairman, has released a report, which will be sent to the appropriate committees of the House and Senate. The report disapproves the enactment of S.1253. This important bill, sponsored by Senator Wheeler, was reported out on April 11. It would affect in a vital way the reorganizations of the railroads which were worked out under the Bankruptcy Act. Space does not permit a summary of the bill's provisions or the conclusions reached by the Association's Committee. Copies of the Committee's report may be secured from the chairman.

THERE WILL BE MAILED to all members of the Association in the very near future a comprehensive report by the Committee on Taxation, of which Roswell Magill is chairman. The report deals with important changes in the tax law and represents a year's work on the part of this committee of specialists in the field of taxation. The membership is urged to give particular attention to this notable report. The Executive Committee was so greatly impressed with the worth of the report that it authorized the Committee on Taxation to send its report to every member of Congress.

As was ANNOUNCED in the first number of THE RECORD, publication of this magazine will be suspended during the summer months and will be resumed with the October number. The Editorial

Board expresses its gratification at the favorable reception accorded to THE RECORD and urges the membership of the Association to make the greatest possible use of its own publication.

ON TUESDAY, JUNE 11, a special meeting of the Association will be held in memory of Harlan Fiske Stone, late Chief Justice of the United States and for many years a member of this Association. It is expected that Judge Learned Hand, C. C. Burlingham, and Young B. Smith will speak.

THE COMMITTEE on Federal Legislation, of which John E. F. Wood is chairman, has sent to the appropriate committees of the Congress reports on the following bills, all of which the Committee approved: S. 1744, which would permit retired officers of the armed forces to act as an agent or attorney for prosecuting claims against the United States; S. 1519 and H.R. 4470, which would amend the act of June 30, 1906 authorizing the conduct of legal proceedings under the direction of the attorney-general; S. 1520, which would authorize Federal judges to employ law clerks, secretaries and other assistants. The Committee also registered its disapproval of H.R. 5078, which relates to the admissibility of foreign documents in the custody of allied authorities of occupation. Copies of the reports may be secured from the secretary of the Committee, William F. Treiber.

THE COMMITTEE on Professional Ethics has issued a supplement to its opinion on professional announcements which was published in THE RECORD for March 1946 at page 76.

The supplement reads as follows:

"In its Opinion No. 960, treating generally with the subject of professional announcements, the Committee included the following statement:

> 'Professional announcements may be sent to other attorneys, known or unknown to the attorney sending the an-

nouncement, and to persons and corporations either known to him or with whom his relationships are such as to make it appropriate that they should receive the attorney's announcement. No such announcement may be published, otherwise than in an approved law list.'

"The Committee has given further consideration to the paragraph quoted above. The Committee's opinion is that a professional announcement which is proper in other respects may be published, for a limited number of times, in a newspaper which is published for the use of members of the Bar only, such as the New York Law Journal. Accordingly, any implication to the contrary in the last sentence of the above quoted paragraph in Opinion 960 is to be deemed overruled.

"This opinion is that of the Committee alone, and has not been passed upon by the Association."

The Calendar of the Association for June

(as of May 15, 1946)

June 4 Adjourned Annual Meeting of Association 5 P.M.
Dinner Meeting of Executive Committee

June 6 "Spring Party," under auspices of Committee on Entertainment

June 11 Dinner Meeting of the Committee on Courts of Superior Jurisdiction
Special Meeting in Memory of Harlan Fiske Stone 5 P.M.

June 19 Dinner Meeting of the Committee on Professional Ethics

OFFICERS OF THE ASSOCIATION

1946–1947

(An asterisk denotes the officer was elected at the Annual Meeting, May 14, 1946)

PRESIDENT

•Harrison Tweed

VICE-PRESIDENTS

•Grenville Clark — •Charles E. Hughes, Jr.
•Alfred A. Cook — •Louis Waldman
•Clifton P. Williamson

SECRETARY — •Whitman Knapp

TREASURER — •Chauncey B. Garver

EXECUTIVE COMMITTEE

Ex officio

Harrison Tweed, *President* — Whitman Knapp, *Secretary*
Chauncey B. Garver, *Treasurer*

CLASS OF 1947

•Arthur H. Dean — Franklin E. Parker, Jr.
Norman S. Goetz — Frank A. Severance

CLASS OF 1948

Albert C. Bickford, — Chester B. McLaughlin
J. Edward Lumbard, Jr. — Arthur H. Schwartz

CLASS OF 1949

Benjamin A. Matthews — Maurice T. Moore
John McKim Minton, Jr. — Samuel L. Rosenberry

CLASS OF 1950

•Edwin Foster Blair — •Francis Harding Horan
•Henry Jacob Friendly — •George A. Spiegelberg

Committee on Admissions

CLASS OF 1947

William C. Breed, Jr. — Arthur Kramer
Livingston Goddard — Horace J. McAfee
James T. Heenehan — Carlyle E. Maw
Robert G. Page

CLASS OF 1948

•Melbourne Bergerman — John S. McCook
Allison Choate — A. Donald MacKinnon
Sol Gelb — William F. Martin
John A. Wilson

CLASS OF 1949

•Mathias Correa — •F. Prescott Hammond, Jr.
•Samuel R. Feller — •Oscar M. Ruebhausen
•Thomas O'Gorman Fitzgibbon — •Joseph A. Sarafite
•Granville Whittlesey, Jr.

COMMITTEE ON AUDIT

•Norris Darrell — •Dana Rodman Koons
•Sigourney Butler Olney

The President's Letter

To the Members of the Association:

Waste should be discouraged. So I am following the Executive Secretary's suggestion to print here some remarks which I prepared before the Seventy-Fifth Anniversary Meeting but did not have the temerity to vocalize:

"Our Seventy-fifth Anniversary coincides with the end of the war. In fact, the annual meeting in 1945 fell on V-E Day. Thus this is a moment to fix our position and to lay a course. But there is neither chart nor compass by which a bar association may set and hold a course. It must steer by the star which rises above the ideal of what a bar association should be.

"The ideal is this: An organization of lawyers of all ages and all varieties of practice—men of high standards, trained minds, a reasonable comprehension of economics and government and a good knowledge of the law—so organized as to be able to reach conclusions after intelligent debate and an impartial vote. The conclusions, when publicized, will influence courts, governmental departments, legislators and the public generally. They will cover a wide field. First, standards of legal education and the ethical conduct of lawyers. This is the primary obligation of a bar association and at whatever cost in dollars and labor the work of preserving and raising these standards must be done. Second, standards of the administration of justice by courts, administrative bodies and other agencies. On these matters a bar association is peculiarly qualified and must insist upon results. The cleaning up of graft in the courts was the inspiration for the organization of this Association. The passing of the Seventy-fifth Anniversary should be an inspiration for renewed energy. Finally, there are local, national and international questions of importance to society. There are those who think that a bar association should not venture into this field. I disagree with them. If lawyers are to meet their responsibilities and to take the leadership to which they are entitled, they must be prepared to guide public opinion on many matters

which are outside of the field of the education and discipline of lawyers and the technique of the administration of justice. I do not mean that this Association should attempt to pass on every social or economic question that comes along. I mean only that on most of the important problems upon which lawyers are qualified to reach a sound conclusion, the Association should act.

"How far distant from the ideal we now are is less important than how hard we try to reach it. What are the hazards of navigation which lie ahead? In my opinion, there is only one. That is a lack of interest on the part of the lawyers who compose the Association. If a large number of the members of the Association can be interested in our objectives, there will be little to worry about except how fast we move ahead. If we can get our members interested, I am certain that we shall not falter because of cowardice, selfishness or ineptitude. Lawyers are as courageous as any group in the community and as generous. And they are more efficient.

"The pessimists say that the Association can never have much influence because the public regards it as an aristocratic and self-perpetuating organization of old men. We know that this is not true. And it will be easy to correct the misconception if we show a little intelligence in our relations with the community. Admittedly there should be more younger lawyers on our rolls in order that our membership be truly representative. We are going to get them. This may run the total of active members to 4,000. That is probably the maximum to which it should go, unless our standards are to be lowered. Very definitely our standards ought not to be lowered.

"The pessimists also insist that our influence will be negligible because the conclusions of the Association will be dictated by the financial interests of the members or their clients. I think this premise will be proved unsound, provided only that the membership becomes really interested in the Association and develops a sense of responsibility towards it. The influence of special interests and the cleavage between classes and creeds are exaggerated.

For the most part what is good for part of the community is good for the whole of it. Whatever is detrimental to one race or one religion will be detrimental to all races and all religions and to the country as a whole. Even at the moment the issues between workingmen and employers of labor are more apparent than real, more temporary than permanent. There is less of a conflict between groups than there is of a common problem to be solved by both.

"On the special subject of election of judges, there is a difference of opinion. There are those who believe that if a particular candidate is peculiarly qualified for judicial office the Association ought to exert itself to secure his election. It is not enough to pass resolutions of approval or disapproval, of qualification or unfitness. It is necessary to take affirmative and aggressive action. Elections are won by getting out the votes, not by taking positions, no matter how right the position or how noble the organization or person taking it.

"There are others who believe that the Association is incapable of reaching and acting on a conclusion based solely on the character and the ability of the candidate and that its position will be determined by the political affiliations of the majority present at the particular meeting. I disagree with them. I believe that, by and large, each member of this Association will take the position which he believes to be right. If not, and instead of an association of lawyers trying to do the right thing, we are only a lot of individuals owing allegiance to political parties, the sooner we find it out the better. For then we shall know that the Association is merely an organization which owns a library and a building in which there can be lectures and committee meetings and cocktail parties. The way to find out is to make the test rather than to evade it. Personally, I am not afraid of the outcome. I believe that the Association will put conscience and pride above politics and profit.

"If there be any present lack of interest in the Association I think that it is largely due to conditions which are only temporary.

During the last six years, war has been the important event in the minds of all of us. Other things have been dwarfed in comparison with the crucial question of victory or defeat. It is true that peace has not yet been made, but nonetheless our minds are freer to deal with other problems. And many of them clamor for solution.

"To stimulate the interest of the membership, there are certain mechanics which will be helpful. If more information about the activities and accomplishments of the Association and its Committees is given to members, more of them will become interested participants. THE RECORD is doing this. Entertainment is not *per se* an objective, but it may assist in progress towards the ideal. Members know each other a little better after an evening at the theatre or an afternoon at a musicale in the House of the Association. They understand each other better as they know each other better. And they like each other better as they understand each other better. These are steps to cooperation in a common purpose.

"Perhaps there will be greater interest when the members recognize the real nature of the work of the Association. Most lawyers are afraid to be called reformers or do-gooders and have a vague idea that that might be the penalty of active interest in the Association. They misconceive the purpose of the Association. I can illustrate by what happened at a dinner of lawyers in Syracuse a couple of weeks ago, given to discuss the establishment of a legal aid office there. I made a few remarks and in the course of them I said that my interest in legal aid is not inspired by any particular sympathy for the under-dog, that I am a proponent not so much of the right of the little fellow to *get* something as of the duty of the community to see that it is *given* to him, that my chief impulse in working for legal aid is my pride in being a lawyer and my desire to have lawyers seize the opportunity to do this important work. After the dinner one of the Syracuse lawyers told me that he had been won over for the first time. He said, 'Heretofore I was always given to understand that legal aid is a job for the social workers. Now I see that it is an obligation of the Bar and something in which every self-respecting lawyer should lend a hand.'

"To be interested in the work of this Association all that is necessary is that a lawyer have an appropriate pride in his profession and in his part in gaining for it the leadership which by heritage, education and qualification the profession is entitled to. But entirely apart from duty, conscience or pride, the Association has something to offer to its members. The New York lawyer is too easily satisfied to stick in the rut and run around in a squirrel cage month after month and year after year. The Association offers him an opportunity to meet his fellow lawyers and to make new friends. To many lawyers this means a lot. It means an opportunity to argue with his fellow lawyers informally or on the floor of a meeting. And what is dearer to the heart of a lawyer than an argument? It means an opportunity to take a part—large or small—in what the Association is doing and to get the sense of satisfaction which comes to anyone who participates in a movement which is going forward, even if sometimes it seems to be advancing very slowly.

"I am an optimist. There is a heavy ground swell running. The air is humid and the sky is cloudy. But the wind is in the West and the barometer is rising. Let us be on our way."

HARRISON TWEED

May 16, 1946

Some Recent Trends and Developments in the Anti-Trust Laws

By John T. Cahill

There have been in recent years several fairly definable trends and quite startling developments in federal antitrust law. I shall concern myself this evening with the following: first, current procedure in the enforcement of these laws; second, the importation of public utility obligations into decrees in antitrust cases; third, the drive on patents via the antitrust laws; and finally fourth, the international aspects of our federal antitrust laws.

CURRENT ENFORCEMENT PROCEDURE

I turn now to the first of these trends--that relating to current procedure in the enforcement of these laws.

The frequent use[1] in recent years of the criminal process—that is, an information or an indictment—rather than a civil complaint, as a medium for the enforcement of the antitrust laws has attracted wide-spread comment.

As we are all aware, the antitrust laws provide both criminal and civil remedies for their enforcement by the Government.[2] On the criminal side, one who violates the Sherman Act is guilty of a misdemeanor and subject to a $5,000 fine or one year's imprisonment, or both. On the civil side, he may be enjoined from future violations and required to do those things which in the judgment of the court are necessary to insure the discontinuance of past violations.

What is more, it is possible for the Government to pursue both criminal and civil remedies either concurrently or successively—

Editor's note: Mr. Cahill has served as an assistant attorney general of New York, special assistant and counsel to the district attorney of New York County and United States attorney for the Southern District of New York. The article published here is a lecture delivered by Mr. Cahill at the House of the Association under the auspices of the Committee on Post-Admission Legal Education.

a practice which has met with at least one blessing from the Supreme Court.[3]

Prior to the last decade, however, the criminal process was invoked in rather flagrant cases, especially those where racketeering practices—threats, intimidation, personal violence—entered as a significant element.[4] Moreover, the Department of Justice, through the present Attorney General, Tom C. Clark, has announced that it will not employ criminal proceedings where the practices complained of have been carried on openly over a number of years.[5]

But in this connection I should like to point out that, prior to Mr. Clark's incumbency, the criminal process has been resorted to in the last decade even under circumstances where the alleged illegal acts had been carried on openly and publicly and under a line of decisions of the highest court of the land.

For example, when recourse was had to criminal proceedings in the recent *Fire Insurance* case,[6] as the vehicle for ascertaining whether insurance was within the scope of the Sherman Act, the indictment of companies and individuals in that case attacked conduct which had been carried on openly, publicly and in reliance upon a long series of cases[7] commencing with the historic decision in *Paul* v. *Virginia*,[8] in which the Supreme Court held over 75 years ago that insurance was not commerce.

The significance of proceeding criminally rather than civilly —apart from the difficulties of trying complex economic issues before a jury in the tense atmosphere of the criminal court room—is a very real one. To proceed criminally means generally to proceed by indictment—and no responsible citizen likes to have his name tainted by a charge of crime, much less undergo the threat of the humiliation of being finger-printed like a common thief. It must be borne in mind that the fact of an indictment being found is real punishment, and involves a stigma arising upon the basis of an *ex parte* proceeding in which the accused is neither represented by counsel nor heard on his own behalf.

The principal justification for the use of the criminal process

has been said to be that it enables the Government to obtain compulsory access to all records and files through the use of the grand jury subpoena—an advantage which it does not enjoy in any comparable degree on the civil side.[9]

Since an indictment is a most serious matter to the individuals concerned, I think there is real need to pause and consider its use in antitrust cases.

The antitrust laws, as the Supreme Court has said, are decidedly vague in their language.[10] Their interpretation has shifted with the passage of the years. The decisions of the appellate courts have practically always been divided, and in a large proportion of the cases they have reversed the decisions of the courts below. The Department of Justice itself has been frank to admit the impossibility of determining in advance the proper meaning of the antitrust laws. As Mr. Justice Jackson said in an article written when he was in charge of the Antitrust Division some years ago:[11]

> "In view of the extreme uncertainty which prevails as a result of these vague and conflicting adjudications it is impossible for a lawyer to determine what business conduct will be pronounced lawful or unlawful by the courts. This situation is embarrassing to business men wishing to obey the law and to government officials attempting to enforce it."

In view of this vagueness, this uncertainty, this confusion, there would seem to be a compelling necessity to examine carefully what changes, if any, should be made in the existing statute law to obviate the necessity for employing the indictment and the criminal process in these antitrust cases—except in extreme instances.

Another procedural problem is that presented by omnibus cases which are grounded in a charge of a conspiracy, and embrace entire industries and cover a generation of time. As an example, there was recently instituted in the cement industry a suit against 89 companies, operating 40 plants in 35 states and manufacturing

approximately 99% of the Portland cement manufactured in the United States.[13]

Many cases, such as this, have been brought in the last several years and in their size and scope they have reached a point where the administrative complexities of trying them almost render impossible a proper judicial resolution.

The ultimate, I believe, is seen in the *Aluminum* case which was tried in this district several years ago.[14] The trial lasted for two years and two months with the court sitting five hours a day, five days a week and over 40 weeks a year. The record, according to one industrious counsel, comprised over 14,000,000 words and the stenographic minutes of the testimony alone have been estimated as eleven times as long as the Bible. The opinion of the District Court took 13 months to prepare and ten days to deliver orally. During the course of the trial four children were born to the wives of counsel in the case, including two—not twins—to the wife of one counsel.

Such proceedings cease to be cases and become for all practical purposes careers for those involved.

The impossibility of handling these matters under the present rules of judicial procedure is illustrated when one tries to appeal one of these omnibus cases. Under familiar practice, counsel for the appellant is supposed to set forth in his brief those findings of fact of the lower court to which he has taken exception and to show wherein they are not supported by evidence.[15] One recent attempt to write such an appeal brief, with which I am familiar, required over 800 pages merely to set forth such exceptions and the basis for them. At this point, had the required procedure been followed out, there would have been no interest at all in the brief on the facts.

In fairness to the Government, it should be pointed out that the framing of the scope of cases properly lies within its sound discretion, and that it is not wise to fetter this discretion by rule or otherwise. But where the printed record on appeal in these cases fills thirty volumes and where years are consumed in their

trial, a situation is presented which should impel scrutiny as to the effectiveness—from any standpoint—of prosecutions so vast and complex as to defy intelligent dissection and handling.

Moreover, these vast antitrust cases—rather than becoming a means through which an endeavor is made to analyze and evaluate intelligently the amazingly complex way in which industries operate today—always seem to degenerate into a mad scramble for what are euphemistically termed "pieces of paper"—letters, memoranda and anything with writing on it—to which life or death importance is ascribed.

To support all-inclusive allegations the Government generally introduces a tremendous mass of letters, memoranda and other records taken from the files of the defendants. To meet this thrust, the defendant must in turn introduce other thousands of letters, memoranda and records taken from its files. As a result, these trials seem to turn into a veritable battle of photostats, pitting thousands of the Government's photostats against thousands of the defendant's photostats, with each side largely resting its hopes for ultimate victory upon certain magical pieces of prose expression.

As to why all this is, I can only suggest that the human mind seems incapable of grasping more than a small fragment of the tremendous mass of factual data presented in these cases, and, in its despair, seeks to have these cases disposed of upon the basis of the intentions or purposes of individuals as purportedly shown by the comparatively few prized "pieces of paper."

To illustrate—in a recent case I can recall that the defendants suffered under the dubious fortune of having had in their employ one of those individuals who kept a diary. This gentleman evidently had time on his hands in the evenings and spent it writing in his diary. And not only did he write what people said during the day, but like Mr. Pepys this gentleman wrote what he thought people were thinking about while they were talking.

There were also in this case a few of those individuals who shared the seemingly universal impulse of correspondents to

search for the colorful cliché to express their thoughts. As so often happens, one of these people outdid himself and in referring to a particular transaction wrote in the vein of MacBeth to another one of the defendants:

> "... if we did not disclose the secrets of the Charnel house, he thought we might close up everybody between us."[35]

Whenever there was the slightest flagging in the proceedings in this case, or whenever defendants believed they were making some slight impression as to what they had actually done, rather than what these colorful letterwriters said, invariably the "secrets of the Charnel house" letter would be brought out and the expected spine-tingling chills produced.

In all large business cases there are always going to be these colorful letterwriters and defense counsel are always going to have to wince under the impact of their dramatic expression.

However, I am of the opinion that in these omnibus cases, these "pieces of paper" or colorful writings have assumed an over-rated importance, approaching in many instances a point where they becloud the substance of what actually was done.

PUBLIC UTILITY OBLIGATIONS

Turning now to the second of the trends or developments in recent years in the antitrust field: The public utility obligation to serve all comers repeatedly has been imposed in the last few years in significant antitrust cases.

To evaluate the importance of this development, it is necessary only to refer to what once was considered a clear and fundamental distinction. Ordinary business enterprises historically have been allowed to exercise complete freedom in the selection of those with whom they will deal, and wide freedom in the determination of the terms upon which they will deal. In contrast to this, public utilities have been compelled to deal with all on equal terms.[36]

The result of the present trend in the antitrust law is to obscure the sharpness of this distinction.

The case on which this trend is based was decided a number of years ago, but was infrequently invoked for many years after its decision. I refer to the *St. Louis Terminal* case.[17]

There a group of railroads, having assembled the only topographically available facilities for railroad terminals in St. Louis, were directed by court decree to submit a plan for taking in on reasonable terms those railroads which were not included in the group.

With the exception of two cases—one involving a combination of tugboat companies operating on the Great Lakes,[18] and another involving the Boston Fish Pier[19]—little was heard of the kind of relief granted in the *St. Louis Terminal* case until the last few years—and since that time the *Terminal* doctrine has been a very busy doctrine, indeed.

First, it has been applied in the recent monopoly cases.

Thus, in the *Pullman* case,[20] involving the only concern in the United States engaged in the business of furnishing sleeping car service to the railroads, the defendant was required by a statutory court to operate sleeping cars manufactured by anyone and to furnish through service to any railroad or group of railroads.

Again, in the *Hartford-Empire* case,[21] the Supreme Court, finding a monopolization of patents, required that the defendants license all comers under their patents on, and I quote, "reasonable terms."[22] The "reasonable terms" the court said, if dispute arose would be fixed by the court itself.

These are cases, it will be noted, in which the courts were confronted with business situations held to involve monopolies. Accordingly, in each case the court was faced with the problem of whether the public interest which the antitrust laws were designed to protect could best be served by breaking up the monopolistic unit or by preserving it on the condition that its services be made available to all on reasonable terms.

The courts in these cases decided that the public interest could

best be served by retaining the monopoly but imposing thereon as the condition for its continued existence public utility obligations.

These cases, accordingly, can be explained as importing public utility standards into the antitrust field only where the courts find monopoly to be present which requires regulation.

Other recent applications of the *Terminal* doctrine, however, are not so readily explained. They do not involve monopoly.

In the field of the press, for example, a three-judge statutory court in this district held it to be a violation of the antitrust laws wherever a newspaper was deprived of the services of a news association of the first rating.[*] Here again, the *St. Louis Terminal* case was vigorously urged upon the court.

In the *Associated Press* case, however, there was an express finding that there was no monopoly. Thus, the sole ground on which the *St. Louis Terminal* case had been decided, and upon which each of the other cases previously discussed must analytically depend, was not present. In fact, it was affirmatively absent because the record in the recent press case shows that during the existence of the Associated Press two other similar organizations, furnishing similar services, had come into being—and the court found that informed opinion in the community differed as to which of the three was the best.

Notwithstanding the absence of a finding of monopoly—or even of the use of predatory or unfair tactics—the court compelled the AP to open up its membership to one who was engaged in active competition with one of its charter members. This was done by requiring the AP to amend its by-laws so as to prohibit individual members from considering competitive factors in voting on the admission of new members.

While the Government stoutly denied the intent to impose public utility concepts upon the AP by requiring it to serve all comers, the fact is that when Government counsel was questioned from the bench in the Supreme Court as to whether the Government would be content if the AP were immediately to close its

ranks to everyone, the answer was no.[26] Moreover, one of the concurring justices in the Supreme Court squarely rested his decision upholding the judgment that the antitrust laws had been violated on the public utility concept of requiring the AP to serve all comers.[27]

I confess I find it difficult to justify a requirement that all competitors be admitted in an enterprise which has achieved preeminence without creating an unlawful monopoly or using predatory tactics—where preeminence has been achieved solely by the industry of the members in creating excellence in their product.

The development of the public utility concept to this extent would lead to the conclusion that we of this generation, who were born into an acquisitive society, have lived to endure in what in part now is a contributive society. For where a group now achieves preeminence—no matter how lawfully—the application of this philosophy of economic equality, or as the economists call it, the egalitarian philosophy, would require that such a group share its achievements and rewards with the newcomer, with the inept and with the incompetent; and interestingly enough, on financial terms which permit no recognition of the intangible value to be attributed to the genius of creation and development of the enterprise.

I have stressed thus far the press case, but it does not stand alone. The imposition of the public utility obligation to serve all comers on an equal basis has been sought by the Government in a number of other recent antitrust cases, such as the *Bausch & Lomb* case,[28] without any apparent monopoly justification. And in a consent decree which was entered within the past two months, the defendant specifically was ordered to sell its unpatented products regardless of the absence of monopoly to all comers and upon equal and non-discriminatory terms for an unlimited time.[29]

The consequences of imposing any such duty to deal with all on equal terms—in the absence of monopoly—I submit require serious study.

We must carefully weigh whether this path of intensive regula-

tion is the one which all business should be required to take. We must likewise carefully consider whether our courts should be burdened with the administrative duties which the widespread imposition of public utility obligations will create.

THE DRIVE ON PATENTS

I will take up briefly now the drive on patents via the antitrust laws.

Since comparatively early in the days of the antitrust laws, the conflict in this country between the lawful monopolies embodied in patents and the postulate of unfettered competition embodied in the antitrust statutes has been never ending and ever increasing.

This conflict has not always existed, however. In certain early cases after the enactment of the Sherman Act, the claim was made and in fact recognized by one or two courts, that patents were not subject to the antitrust law.[28] But since the *Standard Sanitary* case,[29] it has been clear that the existence and ownership of patents did not give the patentee complete immunity from the antitrust laws.

Nevertheless, between 1912—the year in which the *Standard Sanitary* case was decided—and December, 1939, only 27 Government suits were instituted in which violations of the antitrust laws were alleged to have resulted from the abuse of patents—only 27 suits in a period of approximately 27 years.[30]

Then, perhaps as a result of the activities of the Temporary National Economic Committee, the Antitrust Division of the Department of Justice began to bring what can be fairly characterized as a flood of antitrust cases in which the use of patents was the central issue. Between December, 1939 and January, 1941—in that 14 month period alone—17 major suits involving the status of patents under the antitrust laws were begun.[31] And the flood tide has not yet receded.

One important problem raised by this patent drive—important if for no reason other than the number of these cases—involves the

necessity of being able to distinguish between a proper use of a patent and a use which runs afoul of the antitrust laws.

Unfortunately, however, in this field it is not possible to discern the existence of any Platonic universal which might serve as an infallible guide.

The resolution of the line of demaraction between the lawful use of patent monopoly and a use which constitutes an unlawful restraint prohibited by the antitrust laws has occasioned many a spirited contest, and the battle is not yet over. As an example, limited licenses which hitherto were thought to be lawful have now been subjected to vigorous attack.[28] In short, the precise boundaries of the areas of lawful and unlawful use are so far undetermined as to be impossible of accurate definition at this time.

This drive on patents has likewise raised a second, and equally important, problem. That is the consequence of being wrong in deciding what is a lawful use of patents. This problem permits of more precise treatment.

As I have said, by reason of the fact that we are here dealing with a statute whose outlines recede the closer you approach them, the patentee must walk a tight rope—and it may be that there is no net below. If by ill fortune or change in the current of judicial decision he is found to have overstepped the bounds, to declare his patent property as escheated and forfeited seems extraordinary and punitive. But that is what is widely believed to be the current trend—the present development in the conflict between patents and the antitrust law.

The consequences of misjudgment with respect to the patent and the antitrust conflict have been treated in two types of proceedings: private litigation and litigation with the Government.

Turning first to private litigation—for many years, it was the universal opinion of the bar, sustained by many cases that violations of the antitrust statutes by the owner of a patent did not constitute a defense to an infringement suit brought by the patentee.[29]

The theory upon which this belief was based was that patents

were property, and that even an unlawful monopolist had as much right to prevent others from trespassing upon his patent rights as he had to prevent others from trespassing on his real estate.

The infringer was not unduly penalized by this rule, since he still had available his remedies under the antitrust laws of suit for injunctive relief and for treble damages.

But in a suit for direct infringement, namely the *Morton Salt* case,[34] the Supreme Court sustained the defense that since the plaintiff was making use of its patent to restrain the sale of an unpatented article used in conjunction with its patented machine, the plaintiff was guilty of unclean hands and could not maintain a suit for direct infringement.

In a suit for contributory infringement, the *Mercoid* case,[35] the Supreme Court next carried this doctrine to what one writer has referred to as "even more precedent-shattering conclusions."[36] In this case, the owner of a patented combination brought suit for contributory infringement against a defendant who had manufactured and sold an unpatented article which was admittedly designed for use in the patented combination. The Court, however, found that the use of the patented combination had been conditioned upon the purchase from licensees of an unpatented article, and ruled that here too suit could not be maintained.

These cases, I repeat, are a radical departure from prior decisions. They, in effect, forfeit the patent by denying to the patentee the right to protect the patent by suit for infringement.

This forfeiture, however, at least, is limited. For after the patentee can prove abandonment of the practices which constituted use of the patent in violation of the antitrust laws, the normal remedies of protecting the patent by suit are restored to him—and thus the value of his patent is thereby revived.[37]

Turning now to the second line of cases, those involving litigation with the Government, the danger to the patentee who misjudges the application of the antitrust laws is not here confined—as in private litigation— to the possibility that individual patents

specifically used by him in violation of those laws may be rendered temporarily worthless.

The *Hartford-Empire* case is illustrative.[38] Here the District Court, on finding specified violations of the antitrust laws, decreed the irrevocable forfeiture of the patent property of the defendants by compelling them to license all comers under those patents royalty-free. And the decree was implemented by a prohibition against the defendants' engaging in interstate commerce until a satisfactory undertaking of conformance with this order had been filed with the District Court.[39]

Millions of dollars of patent property were thereby lost by decree because the dividing line between the lawful monopoly and the illegal restraint had been crossed. This taking, moreover, was not limited to those patents found to have been used or involved actively in the antitrust law violations, but extended to all patents in the field under attack which were owned by the defendants.

The implications of this decree as a precedent were staggering. One can but imagine the consequences to some of the corporations in this country which spend enormous sums of money each year in research and development, if a limited number of patents of such an organization were found to have been used in violation of the antitrust law, and the appropriate penalty was held to be the striking down of all the fruits of that company's research and invention. The risk of such a penalty would be a tremendous burden upon those who must conduct the large business affairs of this country.

To date, however, that decree marks the high water mark in this field. For on appeal, although the Supreme Court unanimously upheld the District Court's conclusion that violation of the antitrust laws had been committed,[40] it upset by a divided vote (4 to 2) the requirement that the present patents of the defendants be licensed royalty-free. The Court moreover restated and restored many of its old decisions that patents are property like any other form of property, and may not be taken from the defendants in such cases save by appropriate Congressional action.

It did, however, as I have already stated, limit the enjoyment of the defendants' patent property by ordering that royalties be reasonable in amount, and by allowing recourse to the court in the event that prospective licensees were not able to agree with the defendants on what constituted a reasonable royalty.

At the present time further attempts are being made by the Government to establish that which the Supreme Court denied in the *Hartford-Empire* case—that such compulsory licensing be royalty-free.[41] And the growing number of consent decrees in which royalty-free licensing of patents is accepted by defendants indicates that to this limited extent the Government is succeeding.[42]

Personally, I can see no justification for the penalty of compulsory royalty-free licensing. One of the great benefits to the public from the operation of the patent laws has been the public disclosure of new inventions—public disclosure which inventors have been induced to make in return for the protection afforded by the seventeen-year patent monopoly.[43]

If the consequence of antitrust violation is to be confiscation of this protection, this threat—coupled with the difficulty of determining precisely what use of a patent does constitute violation of the antitrust laws—will operate in my judgment as a serious deterrent to the disclosure inherent in patenting an invention.

Industry may well decide that the risks inherent in keeping its inventions to itself as unpatented trade secrets are less onerous than the danger that through use and licensing of patents it may have to share the fruits of its research without reward with competitors. And if this decision is made, we will have a return by industry to the medieval method of employing inventions as secret processes rather than as patented, and hence disclosed, discoveries. Thus the public, instead of gaining by the destruction of limited 17-year patent monopolies, will be faced with perpetual trade secret monopolies.

Industry will most certainly—even if it does take out patents—hesitate to grant licenses to competitors under present unsettled

conditions. Thereby this drive to free the use of patents will merely tend to limit that use solely to the patentees.

INTERNATIONAL ASPECTS OF ANTI-TRUST LAWS

The final trend that I wish to discuss this evening is the application of the antitrust laws to our foreign trade.

In this field I perceive two related developments.

The first, and most noticeable, development is the ever-increasing application, in a jurisdictional sense, of our antitrust laws to the foreign agreements and activities of American businessmen, regardless of the country where such agreements are performed, or where such activities take place.

This jurisdictional trend has had an interesting evolution.

The early landmark case was the Supreme Court's opinion in the 1909 *Banana* case.[44] Here, an American company in cooperation with the Costa Rican government had forced the plaintiff, another American company, out of business and had acquired its property for the ultimate admitted purpose of acquiring a monopoly of the banana industry in Costa Rica. Justice Holmes held that these activities did not come within the purview of the Sherman Act, since the acts complained of took place outside of the United States and were authorized by the foreign government.

The next jurisdictional landmark case in this field was the 1927 *Sisal* case,[45] where the Supreme Court found that certain agreements, entered into by American and Mexican corporations, restricted the importation of sisal into the United States—and held that such agreements violated both the Sherman Act and the Wilson Tariff Act, even though most of the acts in furtherance of the basic agreements took place in Mexico and with the sanction of the local government.

The *Sisal* case, in connection with certain other cases,[46] laid the foundation, in my opinion, for a doctrine that the antitrust laws would be applicable as a jurisdictional matter to the foreign agreements and activities of American businessmen, if it was clear that

the agreements and activities complained of were related to and directly restrained or injured trade in the United States.

Today, however, I must report that this doctrine of the jurisdictional applicability of the antitrust laws is sought to be carried far beyond its previous boundary.

As you are all no doubt aware, the Department of Justice is presently engaged in a vigorous drive against certain international agreements. Through many speeches, through voluminous testimony before Congressional Committees, and through the institution of numerous suits, the Department is attacking agreements between American and foreign manufacturers as cartel agreements—almost any such international agreement is said to be a cartel agreement.[47]

Particularly subject to attack as cartel agreements are agreements between American and foreign companies exchanging patents and technical information, where such agreements specify the territories in which each party may use the patents and technical information of the other.[48]

In a word, almost any such agreement—no matter what may be its beneficial purposes or effects—which may potentially interfere with the ideal of absolute competition in a world-wide sense—would seem to be viewed by the Department as coming within the ambit of our American antitrust laws.

Thus it is that I say that the first aspect of this trend to be aware of is the purpose to have our antitrust laws follow the American manufacturer to whatever part of the earth he may go and there apply to nearly any business transaction in which he may engage. What is more, it should be noted that this drive has met with initial success, as is witnessed by the consent decrees which have recently been entered into in this field.[49]

The other and related devolopment to which I would direct your attention—assuming for the moment the broadest possible jurisdictional application of our antitrust laws—is the attempt to apply the same standards of substantive antitrust law in determining the legality of the agreements and activities of our business-

men in foreign countries as would be applied to determining the legality of such activities and agreements were they carried on in the United States.

In past times, it has been my impression that there has been considerable recognition in this country of the differing factors applicable to the activities and agreements of our businessmen abroad.

One of these differences has been the fact that business is carried on in most countries of the world in a manner far different from our own. Confronted with limited and exhausted national resources and other underlying economic conditions which make it impossible for them to afford the admitted wastes of unlimited competition, many foreign countries have instituted systems based upon regulating or controlling competition as a means of stabilizing production and thus stabilizing employment. Nationalization and rationalization of industry are the order of the day abroad.[80]

Another of these differences specially applicable to foreign business, to which recognition has previously been given, is that the American company engaging in foreign business is faced with many special problems and considerations which are absent in the domestic market. Tariffs, subsidies, ocean freight rates, exchange and clearing agreements, export controls and taxes, differing standards and customs, and matters of national security are but a few of the problems with which the foreign trader has to contend.

Congress itself in the Webb-Pomerene Export Trade Act[81] specifically recognized that competitive conditions and ways of doing business differ in this country and in foreign countries. That Act implicitly acknowledged the unique problems of foreign trade and, by authorizing American companies to combine together in export associations, it created a special means to enable Americans to engage in business abroad.

Supervision over these Webb export associations was given to the Federal Trade Commission, and this body has on several oc-

casions taken the position that an association may enter into agreements or arrangements with foreign groups which contemplate controls over prices, production and distribution, provided such agreements do not offend the statutory prohibitions in the Webb Act against injuring American competitors or restraining trade in the United States.[48]

In short, previous practice and opinion in this country—even by Congress and the Federal Trade Commission—has tended to recognize that agreements and activities entered into abroad by our businessmen should be looked at in light of the many special economic and other considerations governing foreign trade.

The Department of Justice, in its recent suits, however, takes a different view of this.

Of the numerous suits that have recently been instituted in this field, only a few have come before the courts in contested litigation. One of the cases, however, has gone through the first round, and deserves your attention—the opinion of the District Court in the *National Lead* case.[49]

Here, the court refused to consider the question of whether the agreements and activities of the American defendants involved had benefited the public and had not injured any public interest. Further, the court rejected the contention that American concerns cannot do business successfully abroad except in the manner that business is there carried on, and that to abstain from doing business in the foreign manner involves a greater restraint on our trade than by not doing so. Such a contention was said to be a matter for Congressional relief, not for judicial determination.

Undoubtedly by reason of its unique factual situation the *National Lead* case is *sui generis*. Nevertheless, it, and certain other consent decrees that have recently been entered, are indicative of a trend[50] by the Department, at least, to apply the antitrust laws in these cases without taking into account the numerous and very different considerations which are not present in our domestic cases.

A further example of this trend, I might add, is seen in the two suits filed in the last year by the Department of Justice against associations formed under the Webb Act, challenging on the basis of the Sherman Act the rights of such associations to enter into agreements with foreign producers.[85] Up to the present neither of these cases has reached the trial stage.

Much has been written and much has been said on the basic issues of national policy presented by this drive—which has been viewed in some quarters as an attempt to force the American antitrust laws upon the rest of the world.

For my own part, I must confess that this seeming attempt, in the first place, has raised in my mind the question of whether the court room with its adversary atmosphere is the proper medium for trying to resolve the complex and special problems of our foreign trade.

Secondly, it has raised in my mind the question of placing the control and regulation of our foreign business in the hands of a Department of the Government that, unlike the State and Commerce Departments, is not charged with responsibility for our foreign economic and political policy.

Lastly, I am seriously concerned over the question of whether our national interests are best advanced by trying to judge the propriety of the agreements and activities of our businessmen in the foreign market in terms of the standards of substantive antitrust law which have been applicable and moulded to meet the needs of the domestic market.

CONCLUSION

In conclusion, a reasonable regard for the length of this lecture causes me to forbear from discussing other recent developments in the antitrust field.

In these other developments, as in those I have discussed, there are noticeable specific trends, but I discern from them no dominant or controlling theme.

There are those, I should report, who see more deeply into the

crystal globe than I confess I am able to, who profess to detect in all of these specific trends a gradual erosion of the rule of reason as the touchstone for determining violations of the antitrust laws and for determining the appropriate remedies when violations are found.

Correspondingly, of course, such persons see an expansion of the doctrine of what is illegal *per se*.

Thus, there are those who see in the recent *Aluminum* case a recrudescence of the idea that bigness is badness.[10]

Again, in the field of price, the recent *Can Institute* case, among others, causes many to believe that price uniformity without more is sufficient to establish a prima facie case of violation of the antitrust laws.[11]

That there have been definite trends and that there have been significant developments in the last decade these four points that we have considered tonight clearly demonstrate.

So much so that of the antitrust laws, it may be said that far from stopping on dead center they are still as dynamic as American business itself.

Where these recent trends and developments will lead us, in the last analysis, will be determined by the courts. For as Learned Hand, our beloved Senior Circuit Judge, has pointed out, antitrust law—like the law of torts—is necessarily judge-made law.[12] And the reason why it is judge-made law has been ably stated by our late and great Chief Justice Harlan Fiske Stone:

> "The prohibitions of the Sherman Act were not stated in terms of precision or of crystal clarity and the Act itself did not define them. In consequence of the vagueness of its language, perhaps not uncalculated, the courts have been left to give content to the statute . . ."[13]

NOTES

[1] According to information supplied by the Docket Section of the Department of Justice, the Government in the ten-year period from 1936 through 1945 has instituted 438 antitrust suits, of which 191 have been civil cases and 237 have been criminal cases.

For statements of policy in this regard, see Department of Justice Releases, dated

May 18, July 7 and July 30, 1938, C.C.H. Trade Regulation Service (8th Ed.), Pars. 17001, 17004 and 17006; Annual Report of Attorney General to Congress for 1939, C.C.H. Trade Regulation Service (8th Ed.) Par. 15068; Berge, "Remedies Available to the Government under the Sherman Act" (1940) 7 LAW AND CONTEMP. PROB. 104.

Thus, Assistant Attorney General Berge has stated, "It is the announced policy of the Department of Justice, unless there are compelling reasons to the contrary, to bring criminal actions rather than suits for injunction where the evidence indicates that illegal acts have been committed." *op. cit.*, p. 104.

[2] Act of July 2, 1890, 26 Stat. 209, 15 U.S.C. Secs. 1, 4.

[3] *Standard Sanitary Manufacturing Company* v. *United States*, 226 U.S. 20, 52 (1912).

[4] See, *e.g.*, *United States* v. *Fur Dressers Factor Corp.*, C.C.H. Trade Regulation Service (8th Ed.) Par. 15020, where 78 defendants were convicted of business racketeering. The criminal cases instituted under the federal antitrust laws from 1890 to 1940 are listed in TNEC Monograph No. 16, "Antitrust in Action" (G.P.O. 1941), Appendix G.

[5] Thus, *e.g.*, Attorney General Clark has stated: " . . . where the pattern of business practices constitutes the issue proceedings are initiated to seek injunctive relief." (Address, "The Significance of the Sherman Act," delivered to the Commerce and Industry Association of New York, September 25, 1945.)

[6] *United States* v. *South-Eastern Underwriters Ass'n.*, 322 U. S. 533 (1944).

[7] *Hooper* v. *California*, 155 U.S. 648 (1895); *Noble* v. *Mitchell*, 164 U.S. 367 (1896); *New York Life Insurance Co.* v. *Cravens*, 178 U.S. 389 (1900); *New York Life Insurance Co.* v. *Deer Lodge County*, 231 U.S. 495 (1913); *Bothwell* v. *Buckbee, Mears Co.*, 275 U. S. 274 (1927); *Colgate* v. *Harvey*, 296 U. S. 404 (1935); and *cf. Osborn* v. *Ozlin*, 310 U. S. 53, 65 (1940).

[8] Wall. (75 U.S.) 168 (1868).

[9] See, *e.g.*, Lewin, "The Conduct of Grand Jury Proceedings in Antitrust Cases" (1940) 7 LAW AND CONTEMP. PROB. 112; Arnold, "Antitrust Law Enforcement, Past and Future" (1940) 7 LAW AND CONTEMP. PROB. 5; and TNEC Monograph No. 16, "Antitrust in Action" (G.P.O., 1941) p. 81.

[10] *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 489 (1940).

[11] Jackson and Dumbauld, "Monopolies and the Courts," (1938) 86 U. of PA. L. REV. 231, 232.

[12] *United States* v. *Cement Institute et al.*, (D. Colo.), complaint filed on June 28, 1945.

[13] *United States* v. *Aluminum Company of America*, 44 F. Supp. 97 (S.D. N.Y., 1941), rev'd 148 F. (2d) 416 (C.C.A. 2d, 1945).

[14] See, *e.g.*, Rules 9 and 27 (2) (e) of the Rules of the Supreme Court of the United States.

[15] Exhibit H-5847 (Record, p. 15496) *Hartford Empire Co.* v. *United States*, 323 U.S. 386 (1945) and 324 U.S. 570 (1945).

[16] See, *e.g.*, *Terminal Taxicab Co. Inc.* v. *District of Columbia*, 241 U.S. 252 (1916); and *cf. Wolff Packing Co.* v. *Industrial Court*, 262 U.S. 522, 537–8 (1923).

[17] *United States* v. *Terminal Ass'n. of St. Louis*, 224 U.S. 383 (1912).

[18] *United States* v. *Great Lakes Towing Co.*, 208 Fed. 733 (N.D. Ohio, 1913).

[19] *United States* v. *New England Fish Ass'n.*, 258 Fed. 732 (D. Mass., 1919).

[20] *United States* v. *Pullman Co.*, 50 F. Supp. 123 (E.D. Pa., 1943).

[21] *Hartford Empire Co.* v. *United States*, 323 U.S. 386 (1945) and 324 U.S. 570 (1945).

[22] One of the earliest intimations that such a result might be reached in an appropriate case is to be found in Mr. Justice Brandeis' famous dictum in *Standard Oil Co.* v. *United States*, 283 U.S. 163, 172 (1931): "Unless the industry is dominated, or interstate commerce directly restrained, the Sherman Act does not require cross-licensing patentees to license at reasonable rates others engaged in interstate commerce."

[23] *United States* v. *Associated Press*, 52 F. Supp. 362 (S.D.N.Y., 1943) aff'd 326 U.S. 1 (1945).

[24] Printed transcript of Oral Argument before Supreme Court, p. 54 *et seq.*

[25] Frankfurter, J., 326 U. S. 1, 25 (1945).

[26] *United States* v. *Bausch & Lomb Optical Co.*, 321 U. S. 707, 728–9 (1944).

[27] Par. XIII of consent decree entered into by Corning Glass Works in *United States* v. *General Electric et al.*, Civ. Nos. 1364 and 2590 (D. N.J., 1941).

[28] *Rubber Tire Wheel Co.* v. *Milwaukee Rubber Works Co.*, 154 Fed. 358 (C.C.A. 7th, 1907); and *Indiana Manufacturing Co.* v. *J. I. Case Threshing Machine Co.*, 154 Fed. 365 (C.C.A. 7th, 1907). And *cf. Bement* v. *National Harrow Co.*, 186 U. S. 70 (1902) and *Henry* v. *A. B. Dick*, 224 U.S. 1 (1912).

[29] *Standard Sanitary Mfg. Co.* v. *United States*, 226 U.S. 20 (1912).

[30] Address, "Patents and the Anti Trust Law" by Samuel S. Isseks, delivered to the New York Practicing Law Institute, May 13, 1941.

[31] *Glass Container* case (N.D. Ohio) in December, 1939; *Hardboard* case (S.D. N.Y.) on Mach 10, 1940; *Military Optical Instruments* case (S.D. N.Y.) on March 26, 1940; *Optical Wholesalers* case (S.D. N.Y.) on May 28, 1940; *Rock-Wool* case (N.D. Ill.) on June 24, 1940; *Certain-Teed Products* case (D. D.C.) on June 28, 1940; *Gypsum* case (D.D.C.) on June 28, 1940 (Criminal); *Gypsum* case (D.D.C.) on August 15, 1940 (Civil); *Bentonite* case (S.D. N.Y.) on August 27, 1940; *Carboloy* case (S.D. N.Y.) on August 30, 1940; *Univis* case (S.D. N.Y.) on September 6, 1940; *Numont Ful-Vue* case (S.D. N.Y.) on September 16, 1940; *Magnesite Brick* case (S.D. N.Y.) on January 20, 1941; *Panoptik* case (S.D. N.Y.) on September 16, 1940; *General Electric* case (D. N. J.) on January 27, 1941; *Magnesium* cases (S.D. N. Y.) on January 30, 1941; and *Wayne Pump* case (N.D. Ill.) on January 31, 1941.

[32] See *e.g.*, Department of Justice Release dated December 11, 1939; Note (1945) 45 COL. L. REV. 601, 614 *et seq. Cf.* legislation recommended by the Temporary National Economic Committee (TNEC Preliminary Report, July 17, 1939, Sen. Doc. No. 95, 76th Cong., 1st Sess., pp. 16–18; and TNEC Final Report, March 31, 1941, Sen. Doc. No. 35, 77th Cong., 1st Sess., pp. 36–37).

[33] *Brown Saddle Co.* v. *Troxel*, 98 Fed. 620 (C.C. N.D. Ohio, 1899); *Otis Elevator Co.* v. *Geiger*, 107 Fed. 131 (C.C.D. Ky., 1901); *Independent Baking Powder Co.* v. *Boorman*, 130 Fed. 726 (C.C.D. N. J., 1904); *United States Fire E. C. Co.* v. *Joseph Halsted Co.*, 195 Fed. 295 (N.D. Ill., 1912); *Weyman-Bruton Co.* v. *Old Indian Snuff Mills*, 197 Fed. 1015 (S.D. N.Y., 1912);*Harms* v. *Cohen*, 279 Fed. 276 (E.D. Pa., 1922); *General Electric Co.* v. *Minneapolis Electric Lamp Co.*, 10 F. (2d) 851 (D. Minn., 1924); *M. Whitmark & Sons* v. *Pastime Amusement Co.*, 298 Fed. 470 (E.D. S. Car., 1924); *Radio Corporation of America* v. *United Radio & Electric Corporation et al.*, 50 F. (2d) 206 (D. N. J., 1926); *Western Electric Co. et al.* v. *Wallerstein*, 48 F. (2d) 268 (W.D. N. Y., 1930); *Western Electric Co.* v. *Pacent Reproducer Corp.*, 53 F. (2d) 639 (S.D. N. Y., 1930); *Trico Products Corporation* v. *E. A. Laboratories, Inc.*, 49 F. (2d) 404 (E.D. N. Y., 1931); *Gold Seal* v. *RCA*, 52 F. (2d) 849 (C.C.A. 3d, 1931); *Radio Corporation of America* v. *Duovac Radio Tube Corp.*, 6 F. Supp. 275 (E.D. N. Y., 1931); *Radio Corporation of America* v. *Majestic Distributors*, 53 F. (2d) 641

(D. Conn., 1931); and *National Elec. Prod. Corp.* v. *Circle Flexible Conduit Co.*, 57 F. (2d) 219 (E.D. N. Y., 1931).

[34] *Morton Salt Co.* v. *G. S. Suppiger Co.*, 314 U. S. 488 (1942).

[35] *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661 (1944) and *Mercoid Corp.* v. *Minneapolis-Honeywell Regulator Co.*, 320 U. S. 680 (1944).

[36] Zlinkoff, "Monopoly Versus Competition," (1944) 53 YALE L. J. 514, 523.

[37] See, *e.g.*, *Novadel-Agene Corp.* v. *Penn.*, 119 F. (2d) 764 (C.C.A. 5th, 1941); *Sylvania Industrial Corp.* v. *Visking Corp.*, 132 F. (2d) 947 (C.C.A. 4th, 1943); *Universal Sewer Pipe Co.* v. *General Const. Co.*, 42 F. Supp. 132 (N.D. Ohio, 1941); and see *American Lecithin Co.* v. *Warfield Co.*, 42 F. Supp. 270, 272 (N.D. Ill., 1941).

[38] *United States* v. *Hartford Empire Co.*, 46 F. Supp. 541 (N.D. Ohio, 1942).

[39] 46 F. Supp. 541, 621 (N.D. Ohio, 1942).

[40] 323 U. S. 386 (1945) and 324 U. S. 570 (1945).

[41] See Laurence Apsey (formerly Special Assistant to the Attorney-General and chief of the New York office of the Anti-Trust Division), "Compulsory Licensing of Patents as a Remedy in Anti-Trust Suits," 115 N. Y. L.J. 1608, 1626 (April 25–26, 1946), wherein the following statement is made: "In United States v. National Lead Co. [63 F. Supp. 513], which involved the titanium cartel, the District Court granted affirmative compulsory licensing at reasonable royalties of present patents and of future patents issued within the succeeding five years. An appeal taken by the government assigns as error the failure of the court to require royalty-free licensing until the effects of the defendant's illegal combination have been fully dissipated. This appeal will therefore bring again before the Supreme Court the question whether, under the doctrines applied in the Morton Salt, B.B. Chemical and Mercoid cases, royalty-free compulsory licensing may be granted at the suit of the government. The appeal may also lead to some qualification of the holding in the Hartford-Empire case, in which the decision was rendered by less than a majority of the full court." (p. 1626)

[42] See, *e.g.*, Par. VI of consent decree entered into on March 7, 1946 by Corning Glass Works in *United States* v. *General Electric et al.*, Civ. Nos. 1364 and 2590 (D. N. J., 1941); Par. VII (B) of consent decree, dated February 13, 1946, in *United States* v. *Bendix Aviation Corp.*, Civ. No. 2531 (D. N. J., 1942); Par. 9 of consent decree, dated April 9, 1946, in *United States* v. *Diamond Match Co.*, Civ. No. 25-397 (S.D. N. Y., 1944); Par. V of consent decree, dated April 11, 1946, in *United States* v. *Western Precipitation Corp.*, Civ. No. 4677-CC (S.D. Calif., 1945).

[43] See *United States* v. *Dubilier Condenser Corp.*, 289 U. S. 178, 186–7 (1933).

[44] *American Banana Company* v. *United Fruit Company*, 213 U. S. 347 (1909).

[45] *United States* v. *Sisal Sales Corporation*, 274 U. S. 268 (1927).

[46] See *United States* v. *Nord Deutscher Lloyd*, 223 U. S. 512 (1912); *United States* v. *Pacific and Arctic Railway*, 228 U. S. 87 (1913); *Thomsen* v. *Cayser*, 243 U. S. 66 (1917); *United States* v. *Bowman*, 260 U. S. 94, 98 (1922); *Blackmer* v. *United States*, 284 U. S. 421, 437 (1932); consent decree in *United States* v. *N. V. Amsterdamsche Chininefabriek* (S.D. N. Y., 1928); consent decree in *United States* v. *Deutsche Kalisyndikat Gesellschaft* (S.D. N. Y., 1929); and consent decree in *United States* v. *A.B.C. Canning Co.* (S.D. N. Y., 1931).

[47] See, *e.g.*, Berge, *Cartels—Challenge to a Free World* (1944); Edwards, "Economic and Political Aspects of International Cartels"—Monograph prepared for Sub-committee on War Mobilization of the Committee on Military Affairs, United States Senate, 78th Cong., 2d Sess.; Berge, "Antitrust Enforcement in the War and Postwar Period," (1944) 12 GEO. WASH. L. R. 371; Berge, "The Challenge of the

Cartel," New York Times Magazine, August 5, 1945; Address, Attorney General Clark, "The Significance of the Sherman Act," delivered to Commerce and Industry Association of New York, September 25, 1945; Address, Attorney General Biddle, "International Cartels," delivered to Foreign Policy Association, April 7, 1945; and numerous Addresses by Assistant Attorney General Berge (*e.g.*, "Cartels and American Economic Life," delivered to the Fall Conference on Employment, September 20, 1945 and "The Effect of Cartels on the Managerial Function," delivered to the Society for the Advancement of Management, April 18, 1946).

For appearances before Congressional Committees, see testimony of Attorney General Biddle, Assistant Attorney General Berge, and James S. Martin, Chief of Economic Warfare Commission, Department of Justice, in Hearings before a Sub-committee of the Committee on Military Affairs, United States Senate, 78th Cong., Second Sess., pursuant to S. Res. 107 (1943, 1944); and testimony of Attorney General Biddle and Assistant Attorney General Berge before Sub-committee of Senate Judiciary Committee, United States Senate, 79th Cong., First Sess., on S. 11 (1945).

Many of the cases instituted by the Department are listed in Berge, *Cartels—Challenge to a Free World* (1944), pp. 250–7; and Oseas, "Antitrust Prosecutions of International Business" (1944) 30 CORN. L. Q. 42.

For presentation of other points of view as to the necessity or desirability of such agreements, see, *e.g.*, National Foreign Trade Council, Inc., *Memorandum on Regulatory Measures Affecting American Foreign Trade* (1944); Haussmann and Ahearn, "The International Control of Cartels—Past and Future" (1945) 20 THOUGHT 85; Perkins, "Cartels: What Shall We Do About Them?" (1944) 189 HARPERS 570; McClellan, "Role of Cartels in Modern Economy" (1944) 20 FOREIGN POLICY REPORTS 178; Haussmann and Ahearn, "Misconceptions About Cartels" (1945) 60 AMERICAN MERCURY 295; de Haas, *International Cartels in the Postwar World* (American Enterprise Association, 1945); and Hexner, *International Cartels* (1945).

[46] See, *e.g.*, *United States* v. *General Electric Co. et al.*, Civ. No. 4575 (D. N. J., 1945); *United States* v. *Imperial Chemical Industries*, Civ. No. 24–13 (S.D. N. Y., 1944); *United States* v. *Liquidometer Corp.* (S.D. N.Y., 1946); *United States* v. *Westinghouse Electric and Manufacturing Co.*, Civ. No. 5152 (D. N. J., 1945).

[47] See, *e.g.*, consent decree, dated April 11, 1946, in *United States* v. *Western Precipitation Corp.*, Civ. No. 4677-CC (S.D. Calif., 1945); consent decree, dated April 11, 1946, in *United States* v. *Diamond Match Co.*, Civ. No. 25–397 (S.D. N. Y., 1944); consent decree, dated February 13, 1946, in *United States* v. *Bendix Aviation Corp.*, Civ. No. 2531 (D. N. J., 1942).

[48] See, *e.g.*, the summary of legislation regulating business enterprises in foreign countries set forth in National Foreign Trade Council, Inc., *Memorandum on Regulatory Measures Affecting American Foreign Trade* (1944), pp. 111–126.

[49] Act of April 10, 1916, 40 Stat. 516, 15 U.S.C. Secs. 61–65.

[50] Letter, dated July 31, 1924, from Federal Trade Commission to Silver Producers Committee; *In the Matter of Florida Hard Rock Phosphate Export Ass'n.*, FTC Docket No. 202–2 (1945); and *In the Matter of the Phosphate Export Association*, FTC Docket No. 202–3 (1946).

[51] *United States* v. *National Lead Company*, 63 F. Supp. 513 (S.D. N. Y., 1945).

[52] See consent decrees cited in footnote 49, *supra*, and *cf.* articles, speeches and testimony of Department of Justice representatives referred to in footnote 47, *supra*.

[53] *United States* v. *United States Alkali Export Ass'n.*, Civ. No. 24–464 (S.D.

N. Y., 1945), *United States* v. *Electrical Apparatus Export Association*, Civ. No. 33-275 (S.D. N. Y., 1945).

[m] *United States* v. *Aluminum Company of America*, 148 F. (2d) 416, 430–1 (C.C.A. 2d, 1945).

[n] *Milk and Ice Cream Can Institute* v. *Federal Trade Commission*, 152 F. (2d) 478 (C.C.A. 7th, 1946). See also *Eugene Dietzgan Co.* v. *Federal Trade Commission*, 142 F. (2d) 321, 331 (C.C.A. 7th, 1944).

[o] *United States* v. *Associated Press*, 52 F. Supp. 362, 370 (S.D. N. Y., 1943).

[p] *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 489 (1940).

Committee Reports

COMMITTEE ON THE DOMESTIC RELATIONS COURT

REPORT ON SHELTER CARE

In terms of adequacy, shelter facilities in New York City, and the availability of institutions for the long-term care of dependent, neglected and delinquent children have struck a new low.

For many years New York has delegated to private agencies the obligation to provide temporary shelter for those children. New York City does not yet possess either a shelter program or facilities of its own, though it does largely subsidize shelter facilities which are privately owned, maintained and managed. Except for three publicly owned institutions (only one of which—Warwick—is available to the Domestic Relations Court) the State also has delegated to private agencies the function of long-term care of neglected and delinquent children. In this respect New York State is unique. Its delegation of temporary and long-term care of neglected, dependent and delinquent children is greater in extent than that of any other state.

On their part, those private agencies which maintain shelter facilities and institutions for long-term care are (with only two exceptions—Youth House and Children's Camp on Welfare Island) still governed by a high degree of selectivity. This selectivity operates in respect to religion, and also the traits and characteristics of the child to be sheltered temporarily or accepted for long-term care. For example, the child who is mentally retarded, defective or disordered, aggressive or assaultive, or one exhibiting behavior problems which render difficult the management of a child in a temporary shelter or institution for longer care, cannot be placed readily by the Court. Negro and Puerto Rican children also cannot be placed readily.

As a result many hundreds of dependent, neglected and delinquent children in New York City are constantly either being paroled to unfit homes or temporarily boarded in places normally reserved for other equally or more needy cases. The Committee is advised that there are as many as 500 cases daily in need of proper placement in New York City, for whom placement facilities are not available. This, despite the fact that in some private institutions vacancies exist in which children requiring placement could be, but are not being, cared for.

While the State Board of Social Welfare has the right of visitation over these private institutions, it is not empowered to modify or to order the modification of the intake policies of those places.

The following resolution expresses the Committee's position:

WHEREAS the primary responsibility for the welfare and rehabilitation of dependent, neglected and delinquent children rests, in the first instance, with the State of New York; and

WHEREAS it has been brought to the attention of the Domestic Relations Court Committee of the Association of the Bar of the City of New York that there are not sufficient and adequate institutional facilities for the temporary shelter and for the long-term care of all of the dependent, neglected and delinquent children in need of placement in such institutions.

RESOLVED that New York City initiate, operate, and maintain adequate temporary shelter facilities, and that New York State expand its long-term institutional facilities, to the extent that both are necessary to meet the needs of all dependent, neglected and delinquent children who, in the opinion of the Domestic Relations Court of the City of New York, require such temporary detention and institutional care; and

That in determining the needs of such children it shall be the policy of the City and State of New York, respectively, in the first instance to place such children in temporary shelters maintained by the City, and in institutions maintained by the State, and to

utilize shelters and institutions of private agencies only insofar as the said public facilities are not adequate for those purposes.

Respectfully submitted,

COMMITTEE ON
THE DOMESTIC RELATIONS COURT
OF
THE ASSOCIATION OF THE BAR OF THE
CITY OF NEW YORK

Members of the Committee

OSCAR S. ROSNER, *Chairman*
*ABRAHAM N. DAVIS
HENRY EPSTEIN
SIMON GROSS
EDWIN J. LUKAS
SCHUYLER M. MEYER
PAUL D. MILLER
JOHN HENRY RAY
OLIVER C. REYNOLDS
FREDERICK SHEFFIELD
FLORENCE PERLOW SHIENTAG
STUART N. UPDIKE
ARTHUR WINDELS
HARRY T. ZUCKER

* Mr. Davis dissents from the conclusions of the report.

The Library

SIDNEY B. HILL, *Librarian*

Last April the Librarian received the resignation of Mr. Carroll C. Moreland, Assistant Librarian, who came to us in 1943. Although this resignation was accepted with regret, it is gratifying to know that Mr. Moreland's reason for tendering it was to enable him to accept appointment as Librarian of the Biddle Law Library and Assistant Professor of Law at the University of Pennsylvania.

Mr. Moreland graduated from Princeton University with an A.B. Degree in 1924 and with an LL.B. Degree from the University of Pittsburgh Law School in 1927. He was admitted to the Bar of the State of Pennsylvania and practiced in Pittsburgh from 1927 to 1931. He then did post graduate work in the Department of English at Johns Hopkins University, and in 1935 became a member of the Reading Room Staff of the Library of Congress where he served for one year. In 1937 Mr. Moreland received a Bachelor of Science Degree in Library Science from the Carnegie Library School, and then became a Reference Assistant in the New York Public Library. In 1939 he received an appointment as State Law Librarian at the Michigan State Library and held that position until coming to the Association in 1943.

Mr. Moreland while here became a popular member of the staff and made many friends among the members of the Association, all of whom wish him the greatest success in his new position.

The following remarks on Administrative Law were prepared by Mr. Moreland before his resignation had become effective:

"'Since the memory of man runneth not to the contrary' may be a comforting thought to attorneys in some fields of the law, but certainly not in that of administrative law. The expansion of this field has come during the years of practice of many lawyers, and the period of most rapid development is within the memory of all.

"The last twenty or thirty years have seen a tremendous growth in the number and importance of administrative agencies, both state and Federal. These quasi-judicial bodies have promulgated

rules, rendered decisions and formulated policies, affecting the lives and property of everyone. For the most part these rules and decisions have been inadequately published by the agencies: in fact, many of them have never been printed, yet are controlling upon the citizens everywhere.

"It was to meet this condition that the loose-leaf services or topical law reporters were inaugurated. Printed privately, they are not official, but they do supply prompt and, as nearly as may be, authoritative information regarding the agencies or fields covered. The continual increase in the number and importance of administrative agencies has brought with it an ever-increasing number of services, until today only the largest law firms and law libraries can hope to keep even a representative collection.

"The Library does not purchase all the services on the market, but it does attempt to have available services covering the most important fields, such as trusts, taxation (state and Federal), public utilities and carriers, war law, labor, banking, bankruptcy, unemployment insurance and the like.

"Official cures for the state of confusion caused by the promulgation of rules and regulations by administrative agencies have been slow in being fostered. The Federal Register has only been in existence ten years. This official publication, in which must appear as they are promulgated the rules and regulations, of a general nature, of all Federal administrative bodies, was made imperative by the bulk of Federal regulations and their inadequate publication and distribution. Recognition of the chaotic condition came none too soon, and the value of the Federal Register (and of the Code of Federal Regulations) is obvious to all attorneys.

"The same confusion and inadequacy of distribution has grown up in the forty-eight states. Although most state agencies have printed their rules from time to time, frequently the latest edition is out of print and unobtainable. In almost every case it has been impossible to keep abreast of changes. This condition has been recognized by several states and an attempt made to correct it. Article IV, Section 8 of the Constitution of the State of New York,

effective January 1, 1939, provides that no rule or regulation made by any state department, board, bureau, officer, authority or commission, except such as relate to the organization or internal management of the issuing body, shall be effective until it is filed in the office of the department of state. "The legislature shall provide for the speedy publication of such rules and regulations, by appropriate laws." However, it was not until the 1944 session of the Legislature that a law was passed, providing for the machinery for such publication. Chapter 618, Laws of 1944, provides for the publication by the secretary of state of an "official compilation of codes, rules and regulations of the state of New York," with provision for supplements and revisions, not later than April 1, 1945.

"Late in 1945 the Department of State issued the official compilation. It is in five volumes: volumes one and two contain the rules of all departments except labor (volume 3) and public service (volumes 4 and 5). This was a really monumental task (the five volumes contain 3900 pages), and when one takes into account the difficulties of publication of such a work during the war, it is remarkable that it was so soon brought to completion.

"The first two volumes arrange the departments alphabetically: the rules of each department are preceded by a contents page, and in some cases by an index. The compilation is so arranged that the same type can be used to print the rules of each department separately, a saving in printing costs to the state.

"In view of the size of the publication and the speed with which it had to be completed, this official compilation is most satisfactory. Perhaps in later editions a comprehensive index will be supplied: such an index would be of great assistance to the neophyte in finding material.

"Similar codes of administrative rules have been issued by Wisconsin, Michigan and California (partially complete). Pennsylvania, by legislation enacted in 1945, has provided for an Administrative Code and Administrative Register. As these codes are published, they are acquired by the Library. It is to be hoped that ultimately our members will be able to find the rules of all state administrative agencies satisfactorily published in some such fashion and available on our shelves."

RECENT PUBLICATIONS

BENDER'S FORMS OF PLEADING OF THE STATE OF NEW YORK with suggestions for drafting pleadings, explanatory notes, citations of reported cases and cross-references. By Oscar LeRoy Warren, author of Warren's Heaton on Surrogates' Courts; Warren's Negligence in the New York Courts, etc. Published by Matthew Bender & Company. $120.

This is a new loose leaf publication of eight volumes. Volume 1 is now out. Volume 2 will appear within two months and Volume 3 within four months. The other volumes will follow at regular intervals. Some forty-five hundred forms used in recently adjudicated cases have been gathered together and arranged under the following subjects: Formal Parts, Tort Actions, Negligence Actions, Contract Actions, Statutory Actions and Equitable Actions. With the increase of new types of litigation such as labor, radio, aeroplane, etc., there is a real need for this book. The forms are supplemented with numerous footnotes and there is a good subject index for each volume. It is regrettable that the practitioner will have to wait so long for the completion of such a valuable work.

APPROVED LAW LISTS

(In the May Number of THE RECORD the approved commercial and general law lists were published. The list of publishers below completes the list of those who have received from the Special Committee on Law Lists of the American Bar Association a certificate of compliance with the Rules and Standards as to Law Lists.)

Insurance Law Lists

Best's Recommended Insurance Attorneys
Alfred M. Best Company, Inc.
75 Fulton Street
New York City 7

Hine's Insurance Counsel
Hine's Legal Directory, Inc.
38 South Dearborn Street
Chicago 3, Illinois

The Insurance Bar
The Bar List Publishing Company
State Bank Building
Evanston, Illinois

The Underwriters List
Underwriters List Publishing Co.
175 West Jackson Boulevard
Chicago 4, Illinois

Probate Law Lists

Recommended Probate Counsel
Central Guarantee Company, Inc.
141 West Jackson Boulevard
Chicago 4, Illinois

Sullivan's Probate Directory
Sullivan's Law Directory
33 South Market Street
Chicago 6, Illinois

State Legal Directories

The following state legal directories published by
The Legal Directories Publishing Company
310 Reisch Building
Springfield, Illinois

Illinois Legal Directory
Indiana Legal Directory
Iowa Legal Directory
Kansas Legal Directory
Missouri Legal Directory
Ohio Legal Directory
Pacific Coast Legal Directory for States of Arizona, California, Nevada, Oregon and Washington
Pennsylvania Legal Directory
Texas Legal Directory
Wisconsin Legal Directory

Foreign Law Lists

Canada Bonded Attorney
Canada Bonded Attorney & Legal Directory, Ltd.
57 Bloor Street West
Toronto 5, Ontario, Canada

Canada Legal Directory
Canada Bonded Attorney & Legal Directory, Ltd.
57 Bloor Street West
Toronto 5, Ontario, Canada

Canadian Credit Men's Commercial Law and Legal Directory
Canadian Credit Men's Trust Association, Ltd.
456 Main Street
Winnipeg, Manitoba, Canada

Canadian Law List
Canadian Law List Publishing Company
24 Adelaide Street, East
Toronto, Ontario, Canada

The Empire Law List
Butterworth & Co. (London) Ltd.
11 & 12 Bell Yard
London, W. C. 1, England

The International Law List
L. Corper-Mordaunt & Company
104 High Holborn
London, W. C. 1, England